

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT THILL and SUSAN THILL,

Plaintiffs-Appellants,

UNPUBLISHED
December 15, 2015

v

STATE FARM FIRE & CASUALTY
INSURANCE COMPANY,

No. 323339
Bay Circuit Court
LC No. 14-003048-CK

Defendant-Appellee.

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order dismissing their claims. For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

This case arises out of an insurance-coverage dispute relating to what the parties refer to as "ice dam" damage to plaintiffs' home that occurred on March 1, 2010. On March 26, 2010, plaintiffs notified defendant State Farm, whom they maintained homeowners insurance through, of the damage and sought coverage. Defendant's claim representative, Al Pool, inspected the damage to plaintiffs' home on June 14, 2010 and determined that the exterior wood siding was "rotted and deteriorated." Plaintiffs were informed that due to the rot and deterioration, the exterior damage to their home was excluded from their coverage. It appears that plaintiffs thereafter expressed a desire to no longer pursue their claim, and that desire was confirmed in a letter sent by Pool to plaintiffs on September 16, 2010.

Nearly one year later, plaintiffs resumed pursuing their claim. Pool re-inspected the home on January 11, 2012, and State Farm denied coverage shortly thereafter based on the original and further rot and deterioration. Defendant did issue, however, a payment in the amount of \$156.18 to plaintiffs, representing what defendant determined was "the covered portion of their claim." On March 28, 2012, defendant sent a letter to plaintiffs indicating that "State Farm will not give any further consideration to their claims." More than one year later, on May 8, 2013, plaintiffs' attorney sent a letter to Pool requesting an explanation for its denial of coverage. Defendant denied that request. Then, more than nine months later, on January 21, 2014, plaintiffs filed a complaint in circuit court.

Plaintiffs alleged that defendant denied their claim without completing a reasonable investigation; did not act in good faith in denying their claim; acted in an unfair and deceptive manner; caused plaintiffs financial and emotional distress; and violated MCL 500.2026(f)(g), the Uniform Trade Practices Act, and the Fair Trade Practice Act. After filing an answer and affirmative defenses, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Defendant argued that summary disposition pursuant to MCR 2.116(C)(7) was appropriate because plaintiffs suit was barred by the applicable statute of limitations under the insurance policy and MCL 500.2833(1)(q). Plaintiffs countered that, under the terms of the insurance policy, the statute of limitations was lengthened and their suit was therefore timely. The trial court granted defendant's motion, concluding that the language used in the insurance policy provided for the tolling, not the lengthening, of the statute of limitations. However, the court afforded plaintiffs the opportunity to file an amended complaint. After plaintiffs failed to file an amended complaint, the trial court entered a stipulated final order dismissing plaintiffs' claims.

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013). "Issues of statutory construction and contract interpretation are also reviewed de novo." *Klida v Braman*, 278 Mich App 60, 62; 748 NW2d 244 (2008), lv den 483 Mich 891 (2009).

III. APPLICABLE LAW

"Summary disposition under MCR 2.116(C)(7)¹ is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." *Kincaid*, 300 Mich App at 522. "Although generally not required to do so, see MCR 2.116(G)(3), a party moving for summary disposition under MCR 2.116(C)(7) may support the motion with affidavits, depositions, admissions, or other admissible documentary evidence, which the reviewing court must consider[.]" *Id.* "If there is no factual dispute, whether a plaintiff's claim is barred under the applicable statute of limitations is a matter of law for the court to determine." *Id.* at 523. If, however, the parties present evidence that establishes a question of fact concerning the applicable statute of limitations, summary disposition is inappropriate, and the factual dispute must be determined by the jury. *Id.*

"[I]nsurance policies are subject to the same contract construction principles that apply to any other species of contract." *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). In interpreting insurance policies, "the court's role is to 'determine what the agreement was and effectuate the intent of the parties.'" *Hunt v Drielick*, 496 Mich 366, 372; 852 NW2d 562 (2014), quoting *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431

¹ The trial court did not specify on which rule it relied in granting summary disposition on plaintiffs' claims; however, the court's reliance on the expiration of the statute of limitations indicates that it relied on MCR 2.116(C)(7). See, e.g., *Amburgey v Sauder*, 238 Mich App 228, 230, n 2; 605 NW2d 84 (1999).

(1992). “[U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written.” *Rory*, 473 Mich at 461. “[T]he judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of ‘reasonableness’ as a basis upon which courts may refuse to enforce unambiguous contractual provisions.” *Id.*

The statute at issue in this case, MCL 500.2833(1)(q)², provides as follows:

(1) Each fire insurance policy issued or delivered in this state shall contain the following provisions:

* * *

(q) That an action under the policy may be commenced only after compliance with the policy requirements. An action must be commenced within 1 year after the loss or within the time period specified in the policy, whichever is longer. The time for commencing an action is tolled from the time the insured notifies the insurer of the loss until the insurer formally denies liability.

“The goal of statutory interpretation is to give effect to the Legislature’s intent. If a statute’s language is clear, this Court assumes that the Legislature intended its plain meaning and enforces it accordingly.” *Rogers v Wcisel*, ___ Mich App ___, ___; ___ NW2d ___ (2015); slip op at 4 (internal citation omitted).

IV. APPLICATION

In this case, the contractual provision at issue, Endorsement FE-5498, provides the following:

SUIT OR ACTION EXTENSION

In the event a claim is formally denied, in whole or in part, the period of time in which a suit or action may be commenced against the company is extended by the number of days between the date the notice of loss is provided to the company and the date the claim is formally denied.

² Although this case addresses water damage, “the parties agree that plaintiff’s insurance policy was a fire insurance policy and that MCL 500.2833(1)(q) controls here.” *Smitham v State Farm Fire & Cas Co.*, 297 Mich App 537, 543, n 6; 824 NW2d 601 (2012).

Both parties contend that this provision should be enforced according to its plain and unambiguous language, albeit in extremely different ways. However, this Court has previously concluded that this provision is “absolutely void” and “unenforceable” because it “is not compatible with” MCL 500.2833(1)(q). *Smitham v State Farm Fire & Cas Co*, 297 Mich App 537, 549-550; 824 NW2d 601 (2012). Thus, both parties reliance on this provision is misplaced, and we turn to the provision expressly required by MCL 500.2833(1)(q). *Randolph v State Farm Fire & Cas Co*, 229 Mich App 102, 106-107; 580 NW2d 903 (1998).

Applying MCL 500.2833(1)(q)’s one-year statute of limitations to this case, it becomes clear that plaintiffs’ suit is barred. It is undisputed that the loss at issue occurred on March 1, 2010; that plaintiffs notified defendant of the loss on March 26, 2010; and that plaintiffs’ claim was formally denied on March 28, 2012. Under MCL 500.2833(1)(q), plaintiffs had one year from March 1, 2010, to file their complaint, and that one-year period was tolled by the 733 days between March 26, 2010, and March 28, 2012. In sum, plaintiffs had 1099 days, i.e., until March 4, 2013,³ to file their complaint. Therefore, because their complaint was filed on January 21, 2014, their suit is barred by the statute of limitations and the trial court properly granted summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien

³ Technically, 1098 days from March 1, 2010, is Sunday, March 3, 2013. See MCR 1.108(1).